IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.18 OF 2007
WITH
CIVIL APPLICATION NO.33 OF 2007

Shri Chandrakant R. Borahade & Ors. ..Appellants.

V/s.

Shri Dhananjay @ Bhau Baban Borahade & Ors. ..Respondents.

Mr.N.V.Vechalekar for appellants.

CORAM: A.M.KHANWILKAR,J

DATE : MARCH 1, 2007.

P.C. :

1. None appears. Dismissed for non-prosecution.

2. Later on Mr.Vechalekar, advocate for appellants appeared and mentioned the matter for restoration of the appeal with civil application, as he was held up in some other court. For the reasons mentioned across the bar, request for recalling the order passed in morning session is accepted. Accordingly, appeal as well as civil application are restored to the file to its original number and heard immediately.

3. Heard counsel for the appellants. I see no

reason to depart from the conclusion reached by the Court below in granting relief in favour of the plaintiffs in the fact situation of the present case. The Court below has rightly noted that no evidence has been produced to even remotely suggest that plaintiffs' father had given up their share in the suit property by relinquishing all his right therein. If the plaintiffs' father continued to have right in the suit property obviously, plaintiffs would be entitled to assert the right in respect of suit property through their father and also claim that the property be preserved till the disposal of the suit. The trial Court has precisely done this by injuncting the defendant Nos.1 to 7 from approaching third party rights in the suit property bearing Survey No.269 including house till the disposal of the suit. No fault can be found either in the approach or the conclusion reached by the trial Court. That being possible view, appeal should fail. The same is dismissed.

4. Accordingly, civil application disposed of.